CIVIL CASE MANAGEMENT PLAN

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

Priddis Music, Inc.

No. 1:05-CV-491, DNH/DRH

VS

Trans World Entertainment Corporation

IT IS HEREBY ORDERED that, Pursuant to Rule16(b), Federal Rules of Civil Procedure, a status and scheduling conference will be held in this case before the Honorable DAVID R. HOMER, United States Magistrate Judge on **August 23, 2005, at 9:00AM** at the United States Courthouse, Room Number 441, at Albany, New York.

Counsel for all parties or individuals appearing pro se in the above-captioned action are directed to confer in accordance with Fed. R. Civ. P. 26(f) with respect to all of the agenda items listed below. That meeting must be attended in person or, if counsel for the parties are not located in the same city and do not agree to meet in person, then by telephone, and must be held at least **twenty-one (21) days** before the scheduled Rule 16 Conference. Following that Rule 26(f) meeting, a report of the results of that meeting, in the format set forth below, must be filed with the clerk within **fourteen (14) days** after the date of the Rule 26(f) meeting or not later than **ten (10) days** prior to the scheduled Rule 16 conference with the Court, whichever date is earlier. Matters which the Court will discuss at the status conference will include the following: (insert a separate subparagraph as necessary if the parties disagree):

1) JOINDER OF PARTIES: Any application to join any person as a party to this action shall be made on or before the 1st day of March, 2006.

2) AMENDMENT OF PLEADINGS: Any application to amend the pleadings to this action shall be made on or before the 3rd day of April, 2006.

3) DISCOVERY: All discovery in this action shall be completed on or before the 1st day of June, 2006. **(Discovery time table is to be based on the complexity of the action)**

4) MOTIONS: All motions, including discovery motions, shall be made on or before the 1st day of September, 2006. **(Non-Dispositive motions including discovery motions may only be brought after the parties have complied with Section IX of General Order #25)**

5) PROPOSED DATE FOR THE COMMENCEMENT OF TRIAL: The action will be ready to proceed to trial on or before the 2nd day of October, 2006. It is anticipated that the trial will take approximately 5 days to complete. The parties request that the trial be held in Albany, N.Y. **(The proposed date for the commencement of trial must be within 18 months of the filing date).**

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6) HAVE THE PARTIES FILED A JURY DEMAND: ___X__(YES)/ ______ (NO).

7) DOES THE COURT HAVE SUBJECT MATTER JURISDICTION? ARE THE PARTIES SUBJECT TO THE COURT'S JURISDICTION? HAVE ALL PARTIES BEEN SERVED?

Yes.

8) WHAT ARE THE FACTUAL AND LEGAL BASES FOR PLAINTIFF'S CLAIMS AND DEFENDANT'S DEFENSES (INCLUDE COUNTERCLAIMS & CROSSCLAIMS, IF APPLICABLE)?

Plaintiff: Plaintiff's first claim for relief (fraud) is based upon false representations made by defendant prior to the parties entering into a contractual relationship that induced plaintiff to enter into such contracts and additional false representations made by defendant subsequent to entering into a contractual relationship that were collateral to defendant's promises under the contracts, all of which were made without a present intention of performing them. Plaintiff's second claim for relief (breach of contract) is based upon defendant's breach of express and implied promises contained in three separate contracts with plaintiff. Plaintiff's third claim for relief (breach of implied covenant of good faith and fair dealing) has been withdrawn as a separate cause of action and is subsumed within plaintiff's breach of contract claim. Plaintiff's fourth claim for relief (price of goods sold and delivered pursuant to U.C.C. § 2-709) is based upon defendant's failure to pay for goods sold and delivered to defendant and accepted or not properly rejected by defendant. Plaintiff's fifth claim for relief (unjust enrichment) is pled in the alternative to plaintiff's breach of contract claim based upon an anticipated dispute between the parties regarding the scope of defendant's obligations under its contract. Plaintiff's sixth claim for relief (conversion) is based upon defendant's acts of obtaining and retaining plaintiff's property without paying for it by means of false representations with the intent to deprive plaintiff permanently of ownership and use of such property.

Defendant: Defendant has moved to dismiss Plaintiff's fraud claim as a matter of law because it is duplicative of Plaintiff's breach of contract claim, and because Plaintiff fails to set forth any alleged misrepresentation that would support a fraud claim independent of its breach of contract claim. Defendant has additionally moved to dismiss as a matter of law Plaintiff's claims for unjust enrichment and conversion on the ground that those claims are also duplicative of its breach of contract claim.

With respect to Plaintiff's breach of contract claim, Defendant had the contractual right to return product to Plaintiff and did not breach any of the three contracts at issue. With respect to Plaintiff's fourth claim (price of goods sold and delivered pursuant to U.C.C. § 2-709), Defendant properly paid for and returned Plaintiff's product pursuant to its contractual rights.

Although Defendant has not yet answered Plaintiff's complaint, it is anticipated that Defendant will assert a counterclaim against Plaintiff for breach of contract related to Plaintiff's refusal to ship orders to and/or accept returns from Defendant.

9) WHAT FACTUAL AND LEGAL ISSUES ARE GENUINELY IN DISPUTE?

Plaintiff: Without service of defendant's answer, it is too soon for plaintiff to identify all of the factual and legal issues in dispute. It is anticipated that the parties dispute the scope of defendant's rights and obligations under the contracts. Some of the facts pertaining to orders, returns and payments may be in dispute.

Defendant: Defendant agrees that the parties will likely dispute the scope of the parties' rights and obligations under the contracts, and that some of the facts pertaining to orders, returns and payments may also be in dispute.

10) CAN THE ISSUES IN LITIGATION BE NARROWED BY AGREEMENT OR BY MOTIONS? ARE THERE DISPOSITIVE OR PARTIALLY DISPOSITIVE ISSUES APPROPRIATE FOR DECISION ON MOTION?

Plaintiff: Without service of defendant's answer, it is too soon to make such determinations.

Defendant: Without the benefit of the Court's decision on Defendant's partial motion to dismiss, it is premature to make this determination.

11) WHAT SPECIFIC RELIEF DO THE PARTIES SEEK? WHAT ARE THE DAMAGES SOUGHT?

Plaintiff: Plaintiff seeks damages in an amount to be proven at trial, but not less than $3,125,000. Plaintiff also seeks punitive damages, reasonable attorneys' fees and costs and prejudgment, postjudgment and other interest as permitted by law.

Defendant: Defendant is still investigating the damages associated with the counterclaim it anticipates filing with its answer to Plaintiff's complaint.

12) DISCOVERY PLAN:

A. What changes (if any) should be made to the disclosure requirements under Rule 26(a), as well as to the limitations on discovery set forth in the Federal Rules of Civil Procedure, as amended.

Plaintiff: Plaintiff may seek expansion of the limitations on the number of depositions and interrogatories set forth in the Federal Rules of Civil Procedure depending on the outcome of defendant's pending motion for partial dismissal.

Defendant: Defendant may also seek expansion of the limitations on the number of depositions and interrogatories set forth in the Federal Rules of Civil Procedure depending on the outcome of defendant's pending motion for partial dismissal.

B. When will the mandatory disclosures required under Rule 26(a)(1) be made, or when were they made?

On or before September 26, 2005 (30 days from the oral argument on defendant's motion for partial dismissal).

C. Describe the timetable for discovery, identify the subjects to be addressed, state whether discovery should be conducted in phases, and discuss why there are no less costly and time consuming alternative methods available to obtain the same information:

Plaintiff: Plaintiff anticipates conducting written discovery followed by depositions. Without the benefit of defendant's answer or Rule 26(a)(1) disclosures, it is not possible at this time to foresee other less costly and time-consuming alternative methods.

Defendant: Defendant also anticipates conducting written discovery followed by depositions. Defendant agrees that it is not possible at this time to foresee other less costly and time-consuming alternative methods.

D. What forms of discovery does each party intend to pursue?

Plaintiff: Plaintiff will serve interrogatories and requests for production of documents, as well as notice the depositions of and/or issue subpoenas to individuals identified by plaintiff and defendant as having information relevant to the claims and defenses asserted herein.

Defendant: Defendant will serve interrogatories, requests for admissions, requests for productions of documents, in addition to noticing the depositions of and/or issuing subpoenas to individuals identified as having information relevant to the claims and defenses asserted herein

E. Are any protective orders required or requested under Fed. R. Civ. P. 26(c)?

Plaintiff: Plaintiff does not anticipate the need for a protective order at this time.

Defendant: Without the benefit of the Court's decision on Defendant's partial motion to dismiss, it is premature to determine whether Defendant will request a protective order.

13) IS IT POSSIBLE TO REDUCE THE LENGTH OF TRIAL BY STIPULATIONS, USE OF SUMMARIES OR STATEMENTS, OR OTHER EXPEDITED MEANS OF PRESENTING EVIDENCE? IS IT FEASIBLE AND DESIRABLE TO BIFURCATE ISSUES FOR TRIAL?

It may be possible to shorten the length of trial by using stipulations.

14) ARE THERE RELATED CASES PENDING BEFORE THE JUDGES OF THIS COURT?

No.

15) IN CLASS ACTIONS, WHEN AND HOW WILL THE CLASS BE CERTIFIED?

N/A

16) WHAT ARE THE PROSPECTS FOR SETTLEMENT? Please circle below the prospect for settlement:

1-----2-----3-----4-----5-----6-----7-----8-----9-----10
(VERY UNLIKELY) ? ? ? ? ? ? ? ? ? ? ? ? (LIKELY)

CANNOT BE EVALUATED PRIOR TO a decision on defendant's motion to partially dismiss (DATE)

HOW CAN SETTLEMENT EFFORTS BE ASSISTED?

(Do not indicate any monetary amounts at this time, settlement will be explored by the Magistrate Judge at the time of the initial status conference).

COMPLETE QUESTION 17 ONLY IF YOUR FILING ORDER COVER SHEET WAS CHECKED AS AN ADR TRACK CASE. THE PROGRAMS LISTED BELOW ARE COURT-ANNEXED AND NON-BINDING.

17) IF YOUR CASE WAS SELECTED AS A QUALIFYING CONTRACT, TORT, OR NON-PRISONER CIVIL RIGHTS ACTION, PLEASE SELECT THE PREFERRED ADR METHOD.

__________ ARBITRATION

__________ MEDIATION

____X_____ EARLY NEUTRAL EVALUATION

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Pursuant to Fed. R. Civ. P. 26(f) a meeting was held on August 22, 2005 via telephone conference
and was attended by: (Date) (Place)

Kenneth G. Gellhaus and Morgan A. Costello for plaintiff(s) Priddis Music, Inc.

J. Matthew Donohue for defendant(s) Transworld Entertainment Corporation
(party name)

__________________________ for defendant(s) ____
(party name)

At the Rule l6(b) conference, the Court will issue an order directing the future proceedings in this action. The parties are advised that failure to comply with this order may result in the imposition of sanctions pursuant to Federal Rules of Civil Procedure 16(f).

Please detach this case management plan form and return the completed form to the clerk for filing at least ten (10) days in advance of the conference date.